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SUPREME COURT OF THE UNITED STATES
October TERM, [redacted] 1966

No. 1084

COLUMBIA BANK FOR COOPERATIVES, Petitioner

Versus

H. KENNETH LEE, Trustee in Bankruptcy, Respondent

IN THE MATTER OF: FARMERS FEDERATION COOPERATIVE, INC. BANKRUPT

Reply Brief to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

THOMAS A. UZZELL, JR.
Jackson Building
Asheville, North Carolina

FRANK M. PARKER
First Union National Bank Bldg.
Asheville, North Carolina

JAMES M. BALEY, JR.
P. O. Box 748
Asheville, North Carolina

Attorneys for Respondent

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The Respondent prays that a writ of certiorari to the United States Court of Appeals for the Fourth Circuit be denied, and to that end shows to the Court the following:

ARGUMENT

The following Argument is addressed only to that portion of the Petition entitled "Reasons for Granting the Writ" (Petition, Page 13 et seq.)

1. The Petitioner contends that writ should be granted because the question at issue is one involving the relationship of the Farm Credit Act to bankruptcy proceedings "which has not been, but should be settled by this Court". More accurately stated, the question is whether or not the Petitioner, Columbia Bank for Cooperatives, is subject to the laws relating to bankruptcy when it voluntarily enters the bankruptcy proceedings by filing a Proof of Claim.

The foregoing correctly stated question is answered by the Bankruptcy Act, itself, in the following provision of the law:

> "Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or any subdivision thereof shall be proved and filed in the manner provided in this section."
>
> 11 U.S.C.A., Section 93 (n)

It would seem, therefore, that if the United States is bound by the Act, the Petitioner (if it can be considered an agency of the United States) is likewise bound.

As pointed out in the Petition, the United States furnished the original capital to establish the Banks for Cooperatives and received "A" stock for its contribution. As "C" stock was issued to the Cooperatives at the time they received loans from the banks, the "A" stock was retired in the same amount as the "C" stock issued. The Government's "A"

stock in the Bank of Columbia, Petitioners, has at this time been practically retired.

> "At the argument of the Appeal we were informed that this process of transferring ownership in the banks from the Government to the cooperatives, and the complete redemption of the Class A stock is expected to be completed by mid 1967."
>
> Columbia Bank for Cooperatives vs. Lee, Trustee, 368 F (2d) 934

The certificate of the Solicitor General (Petition, Pg. 21) states that this case in its present posture does not call for review by this Court but "inasmuch as the interests of private stockholders are involved, the filing of the above Petition has been authorized."

It would appear, therefore, that the rights of this Petitioner, whose stock is owned almost in its entirety by private stockholders, would be no greater than those of any other bank which might be chartered under the laws of the United States. Under these circumstances, the law relating to the valuation of securities in the hands of a creditor (11 U.S.C.A., Section 93 (h)) would simply be handled in the conventional way, as provided by the Statute. This law is already well settled.

2. Under this heading Petitioner argues that the decision is not in accordance with the applicable decisions of this Court and is contrary to Federal Statutes.

(a) The argument in the Petition under this section is simply not applicable. It is true that a trustee in bankruptcy succeeds only to the rights of the bankrupt, but this has nothing to do with matters of procedure which are specifically provided for by the Bankruptcy Act. The petitioning creditor holds certain securities which are to be appraised and their value credited against the account. When this is done, there can be no showing of prejudice or damage because the creditor will have received dollar for dollar value. The Bankruptcy Court under the Statute followed the prescribed procedure and reached what the Courts below described as a just and equitable conclusion.

(b) Under this subdivision Petitioner argues that inasmuch as there was no "creditor-debtor relationship" that there could be no setoff. No debtor-creditor relationship is claimed. The right of setoff is conferred specifically by Statute.

11 U.S.C.A. Section 93 (h).

(c) Under this sub-section Petitioner argues that the doctrine of "marshalling assets" is not applicable. Whether the action of the lower Courts be called "marshalling assets" or "adjusting equities" would seem to be immaterial. All rights of all parties in interest were fully protected. In this case Petitioner will receive dollar value for dollar owed. In the words of the Court below, "In our circuit marshalling has been employed to prevent a gratuitous sacrifice of one creditor's interests when all interests can be fully protected."

Petitioner in this case was not required to submit to the jurisdiction of the Bankruptcy Court, but by so doing it became bound by the provisions of the Act. It could have foreclosed its security, as is frequently done. There is nothing new about this to require the attention of the Supreme Court.

(d) The Petitioner cites the case of *U. S. National Bank in Johnstown et al vs. Chase National Bank,* 331 U. S. 28 (1947). A reading of this case fails to disclose any conflict with the position taken by the Court below. The Court did not attempt to determine the value of "all secured assets", but valued only the stock held by the bank as security for the loan. Petitioner also incorrectly states that there was a "sale of property under deeds of trust". There was no sale of property under any deed of trust, but a release of the deed of trust and sales by the trustee.

The cited case points out that the creditor did not have to enter these proceedings, but could have relied upon the security. This it did not choose to do. Its reasons for pursuing its present course are unknown to the respondent. Title to the properties securing the indebtedness was vested in a trustee under the deeds of trust, not in the trustee in bankruptcy.

The fact that Petitioner held securities in excess of the indebtedness of the bankrupt to the bank would not change the law which gives the Court the right to value all or a part of the securities for purposes of a setoff under 11 U.S.C.A. 93 (h).

CONCLUSION

Petitioner is apparently unhappy with the course it pursued, but this does not furnish sufficient reason for granting the Writ of Certiorari.

Respectfully submitted,

THOMAS A. UZZELL, JR.
Jackson Building
Asheville, North Carolina

FRANK M. PARKER
First Union National Bank Bldg.
Asheville, North Carolina

JAMES M. BALEY, JR.
P. O. Box 748
Asheville, North Carolina

Attorneys for Respondent